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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,575	02/22/2002	Robert Stanley Farr	F6146(C)	1985

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EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/081,575

Applicant(s)

FARR ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The Amendment filed December 1, 2004 has been entered. Claims 1-21 remain pending in the application , and claims 15-21 remain withdrawn as being directed to a non-elected invention.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on August 3, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application No. 10/081,483 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner failed find support for the new limitation "wherein the container does not comprise an expandable bag". The specification does not specifically exclude the use of expandable bags in the container.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,2,5,7,10,11,12,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ash (US 3063841). The container does not comprise an expandable bag. Also see the Office Action mailed March 3, 2004.

7. Claims 1-4,11,13,14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by de la Guardia (US 5738254).

8. Regarding claims 1-4,11,13, De la Guardia teaches an air (comprises at least 78% nitrogen , 20% oxygen and less than 2.0% argon) pressurized effervescent beverage containing 2-liter bottle, which are known to be suitable for dispensing into a person's mouth. It is notoriously well known that the conventional carbonated beverage 2-liter bottles are substantially filled, and the intended use of the invention is to provide the valve dispensing and bottle pressurizing means on top of the bottle so that a pressurized effervescent beverage is dispensed throughout the storage life of the bottle after opening. Thus, the volume occupied for the pressurized effervescent beverage would include 30% up to the fill level of the conventional carbonated beverage bottle. The container does not comprise an expandable bag (Column 1, lines 7-37, Column 1, line 67 to Column 2, line 43).

Art Unit: 1761

9. Regarding claim 14, applicant's disclosure does not define "smooth and silky" per se, but the disclosure states "not smooth and silky (e.g. when carbon dioxide is the sole gas employed)". Since de la Guardia teaches the beverage is a carbonated beverage that is also pressurized by air for dispensing (i.e. carbon dioxide is not the sole gas), the composition is smooth and silky.

***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over de la Guardia (US 5738254) as applied to claims 1-4,11,13,14 above.

12. De la Guardia is silent in teaching the beverage has less than about 0.5 ppm chlorine. However, it is notoriously well known in the art to remove chlorine from the water used to make a carbonated beverage since chlorine is considered a contaminant and may affect/alter the intended flavor of the beverage. Therefore, it would have been obvious to remove the chlorine to less than 0.5 ppm prior to filling the container of de la Guardia since this is a conventional method for improving the flavor of a carbonated beverage.

13. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Guardia (US 5738254) as applied to claims 1-4,11,13,14 above, further in view of Atkins et al. (US 3917867).

Art Unit: 1761

14. De la Guardia teaches a carbonated beverage, but is silent in teaching a pulp free citrus beverage. Atkins teaches forming an solids free orange juice-based beverage that advantageously be made into a bottled carbonated orange juice that has an exceptionally good quality, good storage ability, and a pleasant flavor , whereas pulp-containing orange juice was previously incompatible with carbonated beverage bottling (Column 1, lines 8-12, 33-44 and Column 5, line 34 to column 6, line 2). Therefore, it would have been obvious to modify De la Guardia and select a carbonated pulp-free orange juice since Atkins et al. teach a pulp free orange juice provides an exceptionally good quality , good storage ability, and a pleasantly flavored bottled carbonated orange juice.

### ***Response to Arguments***

15. Applicant's arguments, with respect to Fox et al. ,Kahan, Jo et al. , and Steinberg et al. have been fully considered and are persuasive, since Fox et al. ,Kahan, Jo et al. , and Steinberg et al. teach beverage concentrates and not beverages *per se* . The rejections of claims 1,2,5,7,8,11-14 under 35 U.S.C. 102(b) as being clearly anticipated by Fox et al. (US 2977231, claims 1,2,5,7,11,12,14, under 35 U.S.C. 102(b) as being clearly anticipated by Kahan (US 3119695), Claims 1,5,7,11 and 12 under 35 U.S.C. 102(b) as being clearly anticipated by Jo et al. (JP 01289450A), claims 1,5,7,11,14 under 35 U.S.C. 102(b) as being clearly anticipated by Steinberg et al. (US 3480185), and claim 9 under 35 U.S.C. 103(a) as being unpatentable over Fox et al. (US 2977231) have been withdrawn.

Art Unit: 1761

16. Applicant's arguments with respect to Goldsmith, in light of the Amendment, have been fully considered and are persuasive since Goldsmith does not teach a bagless system. The rejections of claims 1-5,7,11,12,14 under 35 U.S.C. 102(b) as being clearly anticipated by Goldsmith (US 5143390) and claim 6 under 35 U.S.C. 103(a) as being unpatentable over Goldsmith (US5143390) have been withdrawn. However, upon further consideration of the new limitation (i.e. wherein the container does not comprise an expandable bag), new grounds of rejection are made under 35 USC 112, first paragraph, as well as under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) in light of de la Guardia as discussed above.

17. Applicant's arguments regarding Ash (US 3063841) have been fully considered but they are not persuasive. Applicant argues that Ash does teach a valve suitable to dispense the beverage into the mouth of a consumer since the valve taught by Ash is similar to a faucet in a conventional household sink. However, it is notoriously well known that consumers have indeed dispensed a beverage directly from the faucet of a conventional household sink or, in the case of Ash, from a beer tap into in consumer's mouth, and by doing so have established these valves as being suitable.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Lim et al. (US 6708844 B2) teaches an oxygen-pressurized carbonated drink. Powrie et al.(EP0608224 B1) teach oxygen-pressurized carbonated bottled citrus drinks. Beardsley teaches an air pressurized medical beverage. .

Art Unit: 1761

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

20. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




Art Unit: 1761

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen   
Examiner  
Art Unit 1761

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